
(1955) 02 AP CK 0013

In the Andhra Pradesh High Court

Case No : Writ Petition No. 656 of 1953

V. Harihara Prasad

APPELLANT

Vs

K. Jaganna Dhan and Another

RESPONDENT

Date of Decision : 10-02-1955

Acts Referred:

Land Acquisition Act, 1894 — Section 17(4), 4, 48(1), 5A, 6

Citation : AIR 1955 AP 184

Hon'ble Judges : Satyanarayana Raju, J

Bench : Single Bench

Advocate : V. Vedanthachary, K. Ramachandra Rao and T. Rangaswamy Iyengar, for the Appellant; N. Rajeswara Rao and Govt. Pleader, for the Respondent

Judgement

(1) This is a petition under Art. 226 of the Constitution for the the issue of a Writ of Prohibition on other appropriate Writ prohibiting respondent 2 (The State of Andhra, represented by the Collector, Guntur District) from acquiring and taking possession of the lands belonging to the petitioner or in the alternative for the issue of a Writ of Certiorari, calling for the records relating to the acquisition of the said lands by respondent 2 and quashing the proceedings therein.

(2) The petitioner is the hereditary trusted of Sri Bhavanarayana Swami temple, Ponnur village in the Guntur District. Respondent I is one Kota Jagannadham. Respondent 2 is the State represented by the Collector of the Guntur District.

(3) The facts which give rise to this Writ petition may be stated ; Sri Bhavanarayanawamy temple, of which the petitioner is the trustee, owns various lands in and around Ponnur. About 10 years ago, respondent 1 started building a temple in the same village by the name of Sri Sahasralingeswaraswami temple. He raised money mostly by donations and subscriptions for the construction of the temple. In or about the year 1947, he (respondent 1) wished to acquire Ac. 3-18 cents of land belonging to Sri Bhavanarayanawamy temple and for that purpose made a proposal to the petitioner offering to give in exchange wet lands of double the extent in the

neighbouring village of Patchalatadiparu and this proposal was agreed to by the petitioner subject to the sanction of the Hindu Religious Endowments Board.

The Proposal was not however accepted by the Hindu Religious Endowments Board, whereupon respondent 1 on behalf of the Sahasralingeswaraswami Sangham, applied to the Government for acquisition of the lands by private negotiation for the temple. He was informed by the Government that the acquisition of land on behalf of private individuals was not provided for under the Land Acquisition Act. He was further informed on 21.1.1949 that the land could not be acquired as the Sangham was not a registered body and as it did not come within the definition of "Company" in S. 3(e), Land Acquisition Act. The Sangham thereupon got itself registered under the Indian Companies Act and then applied for the acquisition of the lands required for the construction of the temple. The petitioner objected to the acquisition stating that the lands were very valuable. On a consideration of the objections so raised, the Government finally approved the draft notifications and the draft declaration and also directed that the articles in the Memorandum of the Association of the Sangham be suitably amended to make the temple, proposed to be constructed accessible to the Hindu public without distinction of caste or community.

(4) On 3.2.1953, In G. O. Ms. No. 169 (Rural Welfare Department) the following Notification was published :

"Whereas it appears to the Government of Madras that the land specified below is needed for a public purpose, to wit, for the construction of temples on behalf of Sri Sahasralingeswaraswami Seva Sangham, Limited, Ponnu, notice to the effect is hereby given to all whom it may concern in accordance with the provisions of S. 4(1), Land Acquisition Act 1 of 1894, as amended by the Land Acquisition (Amendment) Act of 1923 ; and the Government of Madras hereby authorises the Sub-Collector, Guntur, his staff and workmen to exercise the powers conferred by S. 4(2) of the Act. Under sub-s. (4) of S. 17 of the Act, the Governor of Madras directs that, in view of the urgency of the case, the provisions of S. 5A of the Act shall not apply to the acquisition of the arable land specified below :

Guntur District, Bapatla Taluk, Ponnur village. (The extent given is approximate)
Unregistered religious service Inam, dry, S. No. 228, belonging to trustee of Sree Bhavanarayanaswamy Temple, Ponnur -- 3.11 acres.

Unenfranchised religious service Inam, dry, S. No. 386-22 belonging to same as in S. No. 228 -- 0.07 acres, Total 3.18 acres."

(5) On 3.2.1953 the following Declaration under S. 6 was also published :

"Under S. 6, Land Acquisition Act, the Governor of Madras hereby declares that the lands specified below and measuring 3.18 acres, be the same a little more or less, is needed for a public purpose, to wit, for construction of temples ; and under Ss. 3 and 7 of the same Act, the Sub-Collector, Ongole, is appointed to

perform the functions of a Collector under the Act and directed to take order for the acquisition of the said lands. Under sub--s. (1) of S. 17 of the Act, the Governor of Madras further directs that the possession of the said lands may be taken on the expiry of 15 days from the date of the publication of the notice mentioned in S. 9(1) of the Act. A plan of the lands is kept in the office of the Sub-Collector, Ongole, and may be inspected at any time during officer house."

Guntur District, Bapatla Taluk, Ponnur village, Unenfranchised religious service inam, dry, S. No. 228 belonging to the trustee of Sree Bhavanarayanawamy temple, Ponnur, for the time being 3.11 acres.

Unenfranchised religious service inam, dry S. No. 388--22 belonging to the same as in S. No. 228 -- 0.07. Total 3.18 acres."

(6) The petitioner's case is that the acquisition is not valid as it is not for a public purpose, that the emergency provisions of the Act, even as amended by Madras Act 21 of 1948, can have no application to this case and that by reason of the said acquisition the Government have invaded or threatened to invade the fundamental rights of the petitioner under Art. 19(1)(f) read with Art. 31 of the Constitution and that the proceeding of the Government are mala fide, unjustifiable and erroneous on the face of the record.

(7) The Collector of Guntur stated in his counter-affidavit that the lands in dispute are not being used for any act of worship or ceremonies connected with the Bhavanarayanawami temple ; that the purpose of the acquisition is for the construction of a temple which is intended to serve the worshipping public; that the acquisition was sanctioned by the Government after duly considering all the objections of the petitioner and that the acquisition proceedings are just, bona fide and in accordance with law.

(8) Mr. Vedanthachari, the learned Counsel for the petitioner, has contended that the acquisition is bad because it purports to be for a public purpose and the for the purposes of a Company ; that in so far as the Notification purports to be for a public purpose, the proviso to S. 6(1), Land Acquisition Act must be satisfied by the payment of the whole or part of the compensation from out of the public revenues or some fund controlled or managed by a local authority ; that the purpose for which the lands are sought to be acquired is not a public purpose ; that the action of the Government in notifying the land for acquisition is not a bona fide exercise of power because what could not be done directly is sought to be done indirectly for the benefit of respondent 1 and that the urgency provisions of the Land Acquisition Act are not intended to meet a case like and for that reason also the acquisition is bad.

(9) The notification states that the land specified is needed for a public purpose, to wit, for the construction of temples on behalf of Sahasralingeswaraswami Seva Sangham Limited, Ponnur. The declaration under S. 6 also states that the lands specified are needed for a public purpose, to wit, for construction of temples. The contention is that the acquisition "ex facie" purports to be for a public purpose

and not for the purpose of a company and that therefore the acquisition must be held to be bad. The notification and the declaration state that the lands are acquired for a public purpose, to wit, for the construction of temples. The argument of the learned Counsel is best answered by a decision of the Madras High Court in -- A. Natesa Asari Vs. State of Madras and Another, (A) where Rajamannar C. J. and Venkatarama Iyer J. held that where there is a public purpose, the powers of the Government to acquire land are not excluded because the acquisition is for the benefit of a company. The learned Judges, considering a similar argument, observed that :

"In fact, we are unable to see any antithesis in two such dissimilar things as "public purpose" and "company". In our judgment, the proper construction to be put upon this section is whenever there is a public purpose an acquisition can be made by the Government whether it is for a company or not. But in case of a company where the acquisition is sought to be made for one of the purpose mentioned in S. 40 that could validly be done without reference to the question whether it is a public purpose or not. In that view, we do not find that there is any prohibition in the Act against the Government acquiring lands for a company when there is a public purpose and following the procedure prescribed in Ss. 6 to 37."

(10) A similar argument was advanced in -- "Ezra v. Secretary of State", 30 Cal 36 (B) and it was rejected as fallacious. The use of the words "public purpose" and "a company" in the disjunctive in S. 6, Land Acquisition Act does not exclude and is not inconsistent with the view that the purpose, even in the case of acquisitions for a company should be a public purpose.

(11) The next contention is that in so far as the notification purports to be for a public purpose, the proviso to S. 6(1) must be satisfied by the payment of the whole or part of the compensation from out of the public revenue. It is a fact that no part of the compensation has been paid out of public revenues.

(12) Section 6(1), Land Acquisition Act runs as follows :

"(6) (1). Subject to the provisions of Part 7 of this Act, when the appropriate Government is satisfied, after considering the report, if any, made under S. 5A, sub-s. (2) that any particular land is needed for a public purpose, or for a company, a declaration shall be made to that effect under the signature of a Secretary, to such Government or some officer duly authorised to certify its order :

"Provided that no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a company, or wholly or partly out of public revenues or some fund controlled or managed by a Local authority."

(13) As I read the section and the proviso it is clear to me that if the acquisition is made for the purpose of a company it is not necessary that the compensation should be met wholly or partly out of public revenues. A plain reading of the

proviso makes this position clear.

(14) The question then is whether the acquisition is for a public purpose. The expression "public purpose" has not been defined in the Land Acquisition Act but the expression has been construed in several decided cases. In -- "Hamabai Framjee v. Secretary of State", AIR 1914 PC 20 (C) the learned Judges held that the expression "public purpose" "Whatever else it may mean, must include a purpose, that is an object or aim, in which the general interest of the community, as opposed to the particular interest of individuals, is directly and vitally concerned." In -- "Amulya Chandra v. Corporation of Calcutta", AIR 1922 PC 333 (D) the question arose as to whether the acquisition of land for the purpose of erecting, at the expense of a private benefactor, a dharmashala for the use of the numerous worshippers resorting at certain seasons of the year to a Hindu temple, was a public purpose. Their Lordships of the Privy Council held that the construction and maintenance of a dharmashala is one which is likely to promote the public health, safety or convenience of the public and that being so, the acquisition cannot be impeached.

(15) In - Brij Nath Sarin Vs. Uttar Pradesh Government and Another, (E) Agarwala and Chaturvedi JJ., had to consider whether the acquisition of land for building a public library was an acquisition for a public purpose and the learned Judges held that it was so.

(16) The decision in - Belegal Gundachar and Another Vs. The State of Madras and Others, (F) is very instructive. The learned Judges held that the expression "public purpose" is not capable of precise definition and has not a rigid meaning. In a very exhaustive judgement the learned Judges held that an acquisition for carrying out any part of an irrigation scheme would certainly be acquisition for a public purpose which was also a State purpose.

(17) In - The State of Bihar Vs. Maharajadhiraja Sir Kameshwar Singh of Darbhanga and Others, (G) Mahajan J. (as he then was) pointed out that the expression is not capable of a precise definition and has not a rigid meaning, that the definition of the expression is elastic and takes its colour from the statute in which it occurs, the concept varying with the time and state of society and its needs.

(18) The following passage from the decision in "Clark v. Nash" (1905) 49 Law Ed 1085 (H) which is a decision of the Supreme Court of the United States, is apposite;

..... that private property may be taken in all cases where the taking may promote the public interest and tend to develop the natural resources of the State."

(19) The following passage from "Nichols on Eminent Domain" is also useful:

"It is a public use for which property may be taken by eminent domain".

(1) To enable the United States or a State or one of its sub-divisions or agencies to carry on its Governmental functions, and to preserve the safety, health and comfort of the the public, whether or not the individual members of the public many make use of the property so taken provided the taking is made by a public body;

(2) To serve the public with some necessity or convenience of life which is required by the public as such and which cannot be readily furnished without the aid of some Governmental power, whether or not the taking is made by a public body, provided the public may enjoy such service as of right;

(3) In certain special and peculiar cases sanctioned by ancient customs or justified by the requirements of unusual local conditions, to enable individuals to cultivate their land or carry on business in a manner in which it could not otherwise be done, if their success will indirectly enhance the public welfare, even if the taking is made by a private individual and the public has no right to service from him or enjoyment of the property taken."

(20) In Rottschaefer on Constitutional Law the effect of the decisions on this aspect of the law is summarised as follows:

"It is frequently sufficient if the use to which the private condemnor is to put the property is one of widespread general public benefit not involving any right on the part of the general public itself to use the property. The adoption of this general test has expanded the scope of valid public uses to include uses by private parties in purely private activities. The public benefit that has been relied upon to sustain such exercises of the power of eminent domain has usually consisted in that derived from the development of a State's important natural resources rendered possible by such exercises of that power. It is on that basis that one private person has been permitted to condemn land for the purpose of conveying water in ditches across that land in order to properly irrigate his own, and to condemn a right of way across another's land for a aerial bucket line necessary for the working of the condemnor's mine. The same considerations are frequently invoked in sustaining the condemnation of property required by drainage or irrigation districts for the accomplishment of their objectives and the condemnation of land and water rights to be used for developing power for general public distribution."

(21) With this exposition of law by decided cases it will be convenient to examine the purpose for which the acquisition is being made in this case. Article 42 of the Articles of the Association of the Company as amended by a Special Resolution passed on 29-7-1950 runs as follows:

"The temples are private temples belonging to the Sangham and they are open to the members of all the communities".

(22) One of the resolutions which has been passed by the Sangham is that the temples are open to all members of the Hindu community without distinction of

caste. The temples are being constructed with public funds. The stated purpose of the construction of the temples is to make them available to the members of all communities without any distinction of caste. The temples are therefore intended to serve all the members of the community by giving them opportunities of worshipping the deity to be installed therein. The members of the community will therefore be benefited by the construction of the temple, and judged by any test, the acquisition for the purpose of construction of the temples must be held to be a public purpose. I have no doubt that the purpose is a public purpose.

(23) One other contention of the learned counsel for the petitioner which requires notice is that the Government having once declined to initiate the acquisition proceedings, it is not open to them to start the acquisition proceedings at a later stage. This argument of the learned counsel is best answered by a judgment of the Allahabad High Court in *Brij Nath Sarin Vs. Uttar Pradesh Government and Another*, (E), where the learned Judges stated that the "mere withdrawal under S. 48(1) of an earlier notification issued under S. 4 does not amount to a decision on objections raised under S. 5-A in favour of the applicant whose land is sought to be acquired", and that the Government is entitled to reconsider its previous decision withdrawing the earlier notification under S. 4 and restart acquisition proceedings with respect to the same land in view of the different considerations prevailing at the time.

(24) Mr. Vedanthachari has endeavoured to use this fact of the Government's decision not to initiate acquisition proceedings at an earlier stage and their decision to acquire the land subsequently as proof of lack of bona fides on the part of the Government. The Government have pointed out at an earlier stage to the respondent that the acquisition could not be at the instance of a private individual and have made certain suggestions to respondent 1. The fact that the Government have made these suggestions does not show want of any bona fides on their part nor the fact that the Government have decided after considering the objections of the petitioner to acquire the land at a subsequent stage denotes any mala fides. On this part of the case Mr. Vedanthachari's argument is that what has been attempted is to seek to do indirectly what could not be done directly. I have set out the various stages at which the Government at first declined to make the acquisition proceedings and subsequently decided to acquire the property. The charge of want of bona fides is to my mind wholly unproved in this case and there is no basis at all for the same. I am satisfied that the Government in acquiring the property were not actuated by consideration other than those which are strictly germane to the public use, which these properties will be put to.

What is more important in this case is that the petitioner himself was willing to give this property in exchange for other properties and this is, in fact, common ground. The proposal could not be put through because the Hindu Religious Endowments Board refused to give its sanction to the acceptance of this proposal

for some reason or other. The promoters of the Sangham have been pressing upon the Government the need for acquiring the property for the purposes of the construction of the temple. The Government have been satisfied that the interests of the public will be served by their acquiring this property for the purpose of the construction of the temple. I am not prepared to hold that there is any want of bona fides on the part of the Government.

(25) One other argument which has been advanced by the learned counsel for the petitioner is that the urgency provisions are not intended to meet a case like the instant one and on that ground also the acquisition must be held to be bad. Section 17(4) of the Land Acquisition Act, which is material, runs as follows :

"In the case of any land to which, in the opinion of the appropriate Government the provisions of sub-s. (1) or sub-s. (2) are applicable, the appropriate Government may direct that the provisions of S. 5-A shall not apply, and if it does so direct, a declaration may be made under S. 6 in respect of the land at any time after the publication of the Notification under S. 4, sub-s. (1)."

(26) What all is required is that the Government must be satisfied that there is such urgency as is contemplated by S. 17(4) ; if they are so satisfied they are entitled to pass an order under S. 17(4) suspending the application of S. 5-A. Whether an urgency exists or not is a matter solely for the determination of the Government and it is not a matter for judicial review. This is the view which has been taken by a Bench of the Madras High Court consisting of Rajamannar C. J., and Venkatarama Ayyar J., in A. Natesa Asari Vs. State of Madras and Another, (A) and I am in respectful agreement with this view. This disposes of all the points raised by the learned counsel for the petitioner.

(27) I am satisfied that this is not a case which merits interference under Art. 226 of the Constitution. This Writ Petition must, therefore, fail and it is dismissed with costs of the respondents. Advocates fee Rs. 200/-.

(28) Petition dismissed.